

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 4187/MUM/2023

Assessment Year 2013-14

DCIT, 15(1)(2),

Room No.126B, 1st Floor,

Aayakar Bhavan, M.K. Road,

Mumbai – 400020

Maharashtra

..... Appellant

v/s

Carron Investment Private Limited,

Gala No.213 A, Shreeji Industrial Estate,

Subhash Lane, Plot No.4,

Jogeshwari (East),

Mumbai – 400060

Maharashtra

..... Respondent

Assessee by : Shri Gautam Thakkar

Revenue by : Shri Krishnakumar, Sr.DR

Date of Hearing – 01/10/2024

Date of Order – 11/12/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeal against the impugned order dated 28.08.2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], which in turn arose from the assessment order dated 31.03.2022 passed under section 147 of the Act, for the Assessment Year 2013-14.

2. The delay of 25 days in filing the present appeal by the Revenue is condoned in view of the submissions made in the application seeking condonation of delay.

3. In this appeal, the Revenue has raised the following grounds: -

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in not considering that the instant case is covered by the judgement of Delhi High Court in the case of Skylight Hospitality LLP v/s ACIT (WP(C) 10870/2017 where SLP filed against this order was also dismissed by the Apex Court?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in not considering the fact that on similar issue, the Hon'ble Supreme Court in the case of PCIT-Central V/s. Mahagun Realtors (P) Ltd. (566(SC)/2022/443/ITR 194(SC)) dated 05.04.2022 have decided the appeal in favour of Income Tax Department wherein the proceedings were conducted against the transferor company?

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in not considering the fact that the defect in recording the name of a non-existent company in a notice u/s. 148 of the I.T. Act, 1961 was a mistake curable under section 292B of the Act as the final assessment order has been passed on the resulting company.

4. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored."

4. In the present appeal, The solitary grievance by the Revenue is against setting aside the assessment proceedings on the basis that notice under section 148 of the Act was issued on a non-existent entity.

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that for the year under consideration, M/s Modern Trading Business Pvt. Ltd. filed its return of income on 30.09.2013, declaring a total income of Rs.3,20,630/-. Subsequently, the return was picked up for scrutiny and vide order dated 30.12.2015 passed under section 143(3) of the Act the total income was

assessed at Rs.12,87,310/-. Subsequently, pursuant to the order dated 21.07.2017 passed by the Hon'ble National Company Law Tribunal ("*Hon'ble NCLT*"), M/s Modern Trading Business Pvt. Ltd., having PAN AABCH4502L, was merged with M/s. Carron Investments Pvt. Ltd. having PAN AAACC1995K. As per the assessee, on 21.03.2018, letter was filed before the Income Tax Officer, Ward-1(2)(4), Mumbai requesting for deactivation of the PAN on the ground that the entity, Modern Trading Business Pvt. Ltd. has merged with M/s. Carron Investment Pvt. Ltd. However, on 31.03.2021 notice under section 148 of the Act was issued on M/s Modern Trading Business Pvt. Ltd. Thereafter, the AO passed the assessment order on 31.03.2022 under section 147 of the Act assessing the total income at Rs.26,48,49,780/-. In its appeal before the learned CIT(A), the assessee apart from challenging the addition made by the AO on merits also raised grounds challenging the validity of the notice issued under section 148 of the Act. As per the assessee, the notice was issued in the name of M/s. Modern Trading Business Pvt. Ltd. on 31.03.2021 is not valid as the said entity ceased to exist after its merger with M/s. Carron Investment Pvt. Ltd., pursuant to the order passed by the Hon'ble NCLT on 27.07.2017. The assessee further submitted before the learned CIT(A) that the fact of the merger was duly intimated to the Department vide letter dated 21.03.2018, wherein the assessee also requested for deactivation of the PAN issued in the name of M/s. Modern Trading Business Pvt. Ltd.

6. The learned CIT(A), vide impugned order, after considering the decision of the Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd., reported in (2019) 416 ITR 613 (SC), held that the assessment completed on

a non-existent entity is *void ab initio* as the notice under section 148 was issued on a non-existent entity. Accordingly, the learned CIT(A) quashed the impugned order and decided the appeal in favour of the assessee. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows:

"6.1.3 Considering the written submission of the appellant and the supporting documentary evidences furnished, it is found that the appellant's contentions are genuine. While reopening the assessment, the notice u/s.148 was issued on a company which was not existent as on the date of issue of the said notice. The appellant's request for deactivation of the PAN was not taken into consideration and the re-assessment was completed on the merged entity M/s. Carron Investment Pvt. Ltd., for the A.Y.2013-14.

6.1.4 The appellant has quoted decisions of the following judicial authorities in support of its contentions in the form of Ground No.1:

- 1) Genpact India (P) Ltd., Vs. DCIT ITAT, Delhi [2020] 118 taxmann.com 40*
- 2) ACIT Vs. Vahanvati Consultants (P) Ltd., SC [2022] 135 Taxmann.com 52*

6.1.5 It is relevant to bring here the decision rendered by the Hon. Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd., (2019) 416 ITR 613 [SC] wherein it was held as under:

"33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment (supra) on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment (supra).

34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

35. For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed."

6.1.6 To sum up, on the basis of the following facts, the assessment completed on a non-existent company is treated as ab initio void as it has no legal validity:

1) As per the orders passed by the NCLT, Mumbai Bench, Mumbai, dt. 19/07/2017 regarding amalgamation of the companies.

2) Assessee/appellant's submission, dt.21/03/2018 before jurisdictional AO requesting the to deactivate the PAN AABCH4502L consequent on amalgamation of the companies vide order, dt. 19/07/2017 of the NCLT, Mumbai Bench, Mumbai.

3) In spite of the above, notice u/s. 148 of the Act was issued and the assessment reopened u/s.147 on 31/03/2021 on the PAN AABCH4502L in the name of the non-existing company M/s. Modern Trading Business Pvt. Ltd., and subsequently passing the order in the name of the amalgamating Company M/s. Carron Investments Private Limited.

6.1.7 In view of the above, Ground No. 1 is allowed.

6.2 As the impugned assessment order, dt.31/03/2022 by issuing notice u/s.148 on a non-existent company, is treated as ab initio void and has no legality, remaining grounds of appeal raised by the appellant are not adjudicated separately and the appeal filed by the appellant is treated allowed."

7. During the hearing, the learned Departmental Representative ("learned DR") by placing reliance upon the decision of the Hon'ble Delhi High Court in Sky light Hospitality LLP vs. ACIT, reported in (2018) 405 ITR 296 (Delhi), submitted that re-assessment notice issued in the name of erstwhile entity would not invalidate the re-assessment proceedings as this error is curable under section 292B of the Act and the assessment order under section 147 of the Act was passed in the name of an existent entity, i.e., M/s. Carron Investment Pvt. Ltd. The learned DR also placed reliance upon the decision of Hon'ble Supreme Court in PCIT vs. Mahagun Realtors (P.) Ltd., reported in (2022) 443 ITR 194 (SC). Thus, the learned DR submitted that since the assessment order has been passed in the name of a correct entity, therefore, the assessment has rightly been made in the name of an existing company.

8. On the contrary, the learned Authorized Representative ("*learned AR*") by referring to the decision of the Hon'ble Supreme Court in Maruti Suzuki India Ltd. (supra) submitted that the learned CIT(A) rightly quashed re-assessment notice issued under section 148 of the Act and set aside the assessment proceedings. The learned AR by referring to paragraph 18(vii) of the decision in Maruti Suzuki India Ltd. (supra) submitted that the decision of the Hon'ble Delhi High Court in Sky light Hospitality LLP (supra) was rendered in its own peculiar facts. The learned AR submitted that this aspect was also noted by the Hon'ble Supreme Court while dismissing the Special Leave Petition ("*SLP*") in Sky light Hospitality LLP vs. ACIT, reported in (2018) 303 CTR 130 (SC), wherein the Hon'ble Supreme Court held that in the peculiar facts of the case, the wrong name given in notice was merely clerical error which could be corrected under section 292B of the Act. The learned AR also relied on the decisions of the Hon'ble Jurisdictional High Court wherein the Hon'ble Court held that notice issued under section 148 of the Act on a non-existing entity is illegal, invalid and *non-est*.

9. At the outset, insofar as the decision of the Hon'ble Supreme Court in Mahagun Realtors Pvt. Ltd. (supra), on which reliance has been placed by the learned DR, we find that in the facts of that case, no intimation regarding the fact of amalgamation was filed before the Revenue and the taxpayer in that case also suppressed the fact of amalgamation in the return filed under section 153A of the Act post amalgamation. The Hon'ble Supreme Court further notes that the conduct of the taxpayer, commencing from the date of the search took place and before all forums reflected that it consistently held

itself as the assessee. Thus, in its peculiar facts, the Hon'ble Supreme Court decided the issue against the taxpayer. However, in the present case, as noted in the foregoing paragraphs, after the merger of M/s. Modern Trading Business Pvt. Ltd. with M/s. Carron Investment Pvt. Ltd. vide order dated 19.07.2017 passed by the Hon'ble NCLT, the assessee filed a letter dated 21.03.2018 before the Income Tax Officer, Ward-1(2)(4) Mumbai intimating the fact of merger and requested for deactivation of PAN of non-existing entity, i.e., M/s. Modern Trading Business Pvt. Ltd. No material has been brought on record to controvert the aforesaid factual position. Thus, we are of the considered view that the decision of the Hon'ble Supreme Court in Mahagum Realtors Pvt. Ltd. (supra) is distinguishable on facts and therefore, is not applicable to the present case. As regards the reliance placed upon the decision of the Hon'ble Delhi High Court in Sky Light Hospitality LLP (supra), we find that the Hon'ble Supreme Court in Maruti Suzuki India Ltd. (supra) in paragraph 18(vii) noted the fact that the said decision was rendered in its own peculiar facts, which was further emphasized by the Hon'ble Supreme Court while dismissing the SLP against the decision of Hon'ble Delhi High Court.

10. We find that recently the Hon'ble Jurisdictional High Court in Uber India Systems Pvt. Ltd. vs. ACIT, reported in (2024) 168 taxmann.com 200 (Bom.), decided the writ petition, challenging the issuance of notice under section 148A(b), order passed under section 148A(d) and subsequent notice issued under section 148 of the Act, in favour of the taxpayer on the basis that there was neither a legal basis nor jurisdiction with the Revenue to issue such notices and order on non-existing entity. Accordingly, the Hon'ble

Jurisdictional High Court held such notices to be illegal, invalid and *non-est*. The relevant findings of the Hon'ble Jurisdictional High Court, in the aforesaid decision, are reproduced as follows: -

"7. We have heard Mr. Mistri, learned Senior Counsel for the Petitioner, and Mr. Sharma, learned Counsel for the Respondents. We have also perused the record.

8. Although Mr. Mistri has raised several contentions in assailing the impugned notice issued under Section 148 of the Act, his primary contention is that the impugned notice needs to be held invalid and illegal, primarily for the reason that the same has been issued to a non-existent entity (Uber India Research and Development Private Limited). According to him, this is sufficient ground for the notice to be quashed and set aside and more particularly considering the settled position in law as laid down by the Supreme Court in the case of Principal Commissioner of Income Tax, New Delhi v Marut Suzuki India Ltd. [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 (SC), as also in a decision of this Court in Teleperformance Global Services (P) Ltd. v Assistant Commissioner of Income Tax, Central Circle 25(1), New Delhi [2021] 127 taxmann.com 46/281 Taxman 331/435 ITR 725 (Bombay) Mr. Mistry relying on these decisions, would submit that it is an undisputed position that, in view of the Order passed by the National Company Law Tribunal, the scheme of amalgamation was approved, whereunder the Assessee - Uber India Research and Development Private Limited stood merged with the Petitioner, hence, the Assessee was a non-existent entity. He submits that an intimation to this effect furnished to the Assessing Officer has not been taken into consideration before the impugned notice under Section 148 of the Act was issued by Respondent No.1.

9. On the other hand, Mr. Sharma, the learned Counsel for the Revenue, on instructions, would not dispute that the Assessee (Uber India Research and Development Private Limited) stood amalgamated with the Petitioner and therefore the assessee was a non-existing entity, so as to legally respond to the action being initiated by Respondent No.1, to reopen its assessment for the assessment year in question.

10. At the outset, we may observe that Respondent no. 1 is based at Hyderabad in the State of Telangana. Thus, at the outset, we address the issue as to whether this Court can exercise jurisdiction under Article 226 of the Constitution, when Respondent No.1, against whom the relief is sought, is not situated within the territorial jurisdiction of this Court. In this context, we may observe that it is not in dispute that, in the facts of the present case, although the impugned notice is issued to the assessee which is a non-existent company, the same is served on the Petitioner, whose registered office is within the territorial jurisdiction of this Court, and who has received the impugned notice at Mumbai. It is the Petitioner which is required to defend such notice as served on it at Mumbai. The Petitioner is an Assessee within the jurisdiction of the Tax Authorities at Mumbai. In this situation, in our opinion, certainly a part of the cause of action, in terms of clause (2) of Article 226 of the Constitution of India, has arisen within the territorial jurisdiction of this

Court, which, in our opinion, entitles the Petitioner to approach this Court invoking its jurisdiction under Article 226 of the Constitution, with a grievance of breach of its legal and constitutional rights. The position of law in this context is also considered and discussed in the decision of this Court in Teleperformance Global Services (P) Ltd. (supra), which is aptly applicable to the case in hand. We are thus inclined to entertain this Petition, considering that a part cause of action has arisen within the territorial jurisdiction of this Court.

11. Now coming to the challenge to the impugned notice as raised by the Petitioner. Having perused the record as also the decisions as relied by Mr. Mistri, we are persuaded to accept Mr. Mistri's contentions that Respondent No.1 could not have issued the impugned notices under section 148 A(b) and pass an order thereon under sub-section (d), as also issue notice under Section 148 of the Act to the assessee as it was a non-existent entity. In such context, Mr. Mistri's reliance on the decision of the Supreme Court in Principal Commissioner of Income Tax, New Delhi v Maruti Suzuki India Ltd.(supra) is apposite. In such decision the Supreme Court has held that once the amalgamating company had ceased to exist as a result of the scheme of amalgamation approved by the NCLT, there was no warrant in law for the Assessing Officer to proceed against a non-existent company. The relevant observations of the Supreme Court in the said decision are required to be noted which reads thus:-

33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment (supra) on 2 November 2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment (supra).

12. The decision of the Supreme Court in Maruti Suzuki India Ltd. (supra) is followed by a Co-ordinate Bench of this Court to allow Teleperformance Global Services (P.) Ltd. (supra), the facts therein being identical to the case in hand. The relevant observations of this Court in the decision of Teleperformance Global Services (P) Ltd. (supra) are required to be noted which read thus:-

"22. The Supreme Court in the case of Maruti Suzuki India Ltd. (supra) had considered that income, which was subject to be charged to tax for the assessment year 2012-13 was the income of erstwhile entity prior to amalgamation. Transferee had assumed liabilities of transferor company including that of tax. The consequence of approved scheme of amalgamation was that amalgamating company had ceased to exist and on its ceasing to exist, it cannot be regarded as a person against whom assessment proceeding can be initiated. In said case before notice under section 143(2) of the Act was issued on 26-9-2013, the scheme of amalgamation had been approved by the high court with effect from 14-2012. It has been observed that assessment order passed for the assessment year 2012-13 in the name of non-existing

entity is a substantive illegality and would not be procedural violation of Section 292(b) of the Act. The Supreme Court in its aforesaid decision, has quoted an extract from its decision in Saraswati Industrial Syndicate Lid. v CIT [1990] 53 Taxman 92/186 ITR 278 (SC). The Supreme Court has also referred to decision of Delhi high court in the case of CIT v Spice Entertainment Ltd. [2018] 12ITR-OL 134 (SC) and observed that in its decision Delhi high court had held that assessment order passed against non-existing company would be void. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estoppel against law. Such a defect cannot be cured by invoking provisions under section 292B. The Supreme Court had also taken note of decision in Spice Entertainment Ltd. (supra) was followed by Delhi high court in matters, viz. CIT v Dimension Apparels (P.) Ltd. [2014]. [2014] 52 taxmann.com 356/370 ITR 288 (Delhi), CIT v Micron Steels (P) Ltd. [2015]_[2015] 59 taxmann.com 470/233 Taxman 120/372 ITR 386 (Delhi) (Mag.); CIT v Micra India (P) Ltd. [2015]_[2015] 57 taxmann.com 163/231 Taxman 809 (Delhi) and in CIT v Intel Technology India Ltd. [2016] 380 UTE 272 Karnataka high court has held, if a statutory notice is issued in the name of non-existing entity, entire assessment would be nullity in the eye of law. It has also been so held by Delhi high court in the case of Pr CIT v Nokia Solutions & Network India (P) Ltd. [2018]. [2018] 90 taxmann.com 369/253 Taxman 409/402 ITR 21 (Delhi).

13. In the light of the above discussion, we are of the clear opinion that there was neither a legal basis nor jurisdiction with Respondent No.1 to issue the impugned notice under Section 148 A(b) and pass an order thereon and further to issue the impugned notice under Section 148 to a non-existing entity- "Uber India Research and Development Private Limited". Such notices at the threshold were illegal, invalid and non-est.

14. In the light of the above discussion, the Petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

15. We however clarify that, except for what has been held hereinabove, we have not delved on any other issue on the entitlement of the Revenue and/or any of the rights and liabilities of the Petitioner, which are expressly kept open."

11. In the present case, it is discernible from the record that the Revenue has not disputed the fact that the notice under section 148 of the Act was issued on a non-existing entity, even after the intimation by the assessee regarding the fact of the merger. The Revenue has emphasized on the fact that such an error is a curable defect under section 292B of the Act and since the assessment order has been passed in the correct name, therefore, the assessment has rightly been made in the present case.

12. Having considered the judicial pronouncements as noted above, we are of the considered view that notice under section 148 of the Act is the very foundation of the entire edifice of the re-assessment proceedings, which culminates in the assessment order under section 147 of the Act and therefore, is most germane to the entire re-assessment proceedings being a jurisdictional pre-condition. Since in the present case, the very notice under section 148 of the Act was issued on a non-existing entity, i.e., M/s Modern Trading Business Pvt. Ltd., respectfully following the decision of the Hon'ble Supreme Court in Maruti Suzuki India Ltd. (supra) and Hon'ble Jurisdictional High Court in Uber India Systems Pvt. Ltd. (supra), we are of the considered view that the learned CIT(A) has rightly quashed the re-assessment notice issued under section 148 of the Act since the same is *void ab initio*. Therefore, consequently, the assessment proceeding has rightly been quashed by the learned CIT(A). Accordingly, the impugned order passed by the learned CIT(A) on this issue is upheld and grounds raised by the Revenue are dismissed.

13. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 11/12/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/12/2024
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai